

Feb. 28, 1995

Before the
Federal Communications Commission
Washington, D.C. 20554

1995

In the Matter of

Amendment of Part 90 of the
Commission's Rules to Facilities
Future Development of SMR Systems
in the 800 MHz Frequency Band

PR Docket No. 93-144

Implementation of Sections 309(j)
of the Communications Act -
Competitive Bidding 800 MHz SMR

GN Docket No. 93-253

REPLY COMMENTS

I. INTRODUCTION

Genesee Business Radio Systems, Inc. (GBRS) is a small business that sells, services and rents dispatch radio equipment in the 450 MHz and 800 MHz frequency bands. GBRS is affiliated with Allstate Mobile Communications, Corp. (AMC) and Licciardi Radio Communications, Inc. (LRC) that combined revenue and personnel are around \$1,500,000 collectively and employ 9 people in Rochester, New York.

Introduction

GBRS provides sales and service of 800 MHz dispatch radio equipment to over 160 customers with over 1700 radios in the Rochester, New York area along with LRC. Our main 800 MHz repeater site is Pinnacle Hill that covers the Rochester metropolitan area better than any other antenna site. We provide interconnect service to any dispatch user who requests this extra feature and we restrict telephone service to only local phone numbers throughout the dispatch area.

Our location is within the Canadian border area which limits our available SMR channels from 280 to 60 channels. Our area has been wait listed with no available spectrum from the original grant date April 15, 1985.

Our prime license is WBNB431 Allstate Mobile Communications which is 10 SMR channels that is loaded and awaits additional inter-category channels from the Industrial pool, which was stopped by the Federal Communications Commission (Commission) 800 MHz license freeze of August 9, 1994.

II. DISCUSSION

A. CHANNEL ASSIGNMENT AND SERVICE AREAS

1. Spectrum Designated for MTA Licensing

We endorse the comments on SMR WON. We believe that the Commission should auction only 100 channels to the top bidders, and retain as an equal playing field the other remaining 100 channels to the incumbent, traditional SMR providers for their expansion and growth. The minimum number of channels an EMSP (Expanded Mobile Service Provider) system needs to obtain is 42 channels, per 90.667(a).

2. Size of MTA Spectrum Blocks and Spectrum Aggregation Limit

If the auction is permitted, then the auction would be better served in BEA, rather than MTA, in the top 150 cities. The Commission should not injure the rural areas for private radio service because of the congestion of major metropolitan areas.

The four groups of 50 channels for auction should only have the top bidders for 100 channels with awards, so that the remaining 100 channels will remain for the incumbent, traditional SMR 800 MHz licensees for an equal playing field, instead of all 200 channels being awarded to wide-area EMSP bidders and others.

We concur with SMR WON to have one block separated into 15-15-15-5 channel blocks for other incumbents to bid, excluding EMSPs like NEXTEL, or alternatively with PCIA to have one 50 channel block separated into five 10 channel blocks.

3. Licensing of Non-Contiguous Local Channels

Licensing should be in accordance with existing SMR rules with protection from interference by DHAAT considering the terrain in between systems.

4. Licensing in Mexican and Canadian Border Areas

Since the 80 "lower" channels are not available in the Canadian area, the Commission needs to permit inter-category sharing for the incumbent, traditional SMR providers expansion when channels are available.

B. RIGHTS AND OBLIGATIONS OF MTA LICENSEES

1. Operational Flexibility

Incumbent SMR licensees need NOT have a mandatory requirement to re-locate their frequencies by re-tuning their SMR systems which will be a costly process and needs to have a thorough engineering of the frequency spacing to ensure the new channels will have no operational and no interference problem, to be like the present incumbent frequencies.

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2. Treatment of Incumbent Systems

Re-tuning of incumbent SMR systems must be done voluntary, NOT mandatory, at the preference of the incumbent and will cost at least \$6,000 per frequency pair (Channel) in small system changes up to \$10,000 per frequency pair for large system changes.

3. Co-Channel Interference Protection

- a. We agree to keep 40dB protection.
- b. We agree to maintain 22dBuV/m to adjacent MTA or other licensee.

4. Emission Masks

Technology is expanding so rapidly that consideration is needed for the developing technology, like frequency-hopping and spread spectrum. The Commission needs to allow rules for high power digital systems on a narrow 5 kHz spacing for incumbent providers to have a means for expansion.

C. CONSTRUCTION REQUIREMENTS

We mostly agree with the recommendations. We do not like the present Commission's practice that grants to wide area EMSPs licenses a 4 year waiver upon their request of the 1 year construction and therefore not constructing and operating any system for the 4 years of the waiver.

D. SMRs ON GENERAL CATEGORY CHANNELS & INTER-CATEGORY SHARING

We do NOT agree on the Canadian border area where there are NO "lower" 80 channels, and that no use will be made of available inter-category channels. A solution would be to auction only 100 of the 200 channels to the top 2 bidders.

E. LICENSING MECHANISM FOR 800 MHZ SMR SERVICE

1. Application Procedures

Licensing by MTA is NOT considering incumbent systems, since each MTA includes several BTA or major cities that are individual market areas.

- a. Initial Eligibility. Agree.
- b. Application Procedures for MTA Licenses. Agree.
 - (1) Initial Applications.
 - (2) Processing and Procedural Rules.
 - (3) Amendments and Modification Applications.
 - (4) Petitions to Deny.
 - (5) Subsequent Applications.

c. Application Procedures for Local SMR Channels

Agree. We see an equal playing field when the Commission gives consideration to applications by site-specific or area-specific. In our area the 2 largest cities of the MTA are Buffalo and Rochester, which are definitely separate market areas.

- (1) Initial Applications.
- (2) Processing and Procedural Rules.
- (3) Amendments and Modification Applications.
- (4) Petitions to Deny.

2. Regulatory Classification of Licensees

We strongly DISAGREE. Our businesses; GBRS, AMC and LRC; are private dispatch companies that provide dispatch and also inter-connect service to existing dispatch customers that is limited to the restricted area of the local telephone area. It is not like cellular, because only a wide-area EMSP provider is like cellular with low power sites, frequency re-use and automatic hand-off.

We are a Private Mobile Radio Service (PMRS) provider with restricted inter-connect service. Most users with inter-connect have Push-To-Talk (PTT) radio equipment rather than full-duplex radio equipment, as is cellular. The ONLY category for Commercial Mobile Radio Service (CMRS) is a wide-area EMSP, like NEXTEL, that has low RF power ERP, frequency re-use, and automatic hand-off.

F. COMPETITIVE BIDDING ISSUES

1. Competitive Bidding Design

- a. General Competitive Bidding Principles
Agree, if auctions are permitted.

b. Competitive Bidding Methodology for 800 MHz SMR licenses

The Commission should impose a performance bond of \$5,000.00 per channel for the 5 year term of the license to ensure the auctionee will construct and operate the FCC grant over the term of the license. An additional penalty should be imposed for falsifying reports and status to FCC with mandatory 6 month imprisonment.

- (1) MTA Licenses. Agree, if auctions are permitted.
- (2) Local Licenses

We DISAGREE that one single round of auctions in sealed bid would be fair, and suggest that at least several rounds be done with 30 days interval.

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2. Procedural, Payment and Penalty Issues

- a. Upfront Payments. Agree with minimum \$2,500.
- b. Down Payment and Full Payment for Licenses Awarded by Competitive Bidding. Agree.
- c. Bid Withdrawal, Default, and Disqualification. Agree.

3. Regulatory Safeguards

- a. Unjust Enrichment Provisions. Agree to 3 year ownership.
- b. Performance Requirements. Agree.

The Commission should impose a performance bond of \$5,000.00 per channel for the 5 year term of the license to ensure the auctionee will construct and operate the grant over the term of the license. An additional penalty will be imposed for falsifying reports and status to FCC with mandatory 6 month imprisonment.

- c. Rules Prohibiting Collusion.

The Commission needs to ensure that wide-area EMSPs operators, consolidated or not, will not combine their acquisitions by auction. Case in point would be high bidders of NEXTEL, Dial Page, One-Comm, Powerfone and Pittencrieff.

4. Treatment of Designated Entities

- a. Introduction.
- b. Businesses Owned by Women and Minorities. Agree.
- c. Small Businesses.

(1) Specific Special Provisions. We request financing of auction 80% be paid over the 5 years of the license. We believe that the 3 year period for unjust also apply to small businesses.

(2) Eligibility. We DISAGREE with definition of small business sales of average under \$40 million over 3 years but use the US Chamber of Commerce standard for retail/service companies of less than \$5.5 million annually.

- d. Rural Telephone Companies. No comment.
- e. Additional Special Provisions. We have an opinion that 80% of all Two-way Radio Sales and Service companies are small businesses that struggle with capital investment for this new technology emerging of wide-area EMSP service. Most companies will have less than \$500,000 assets and revenue under \$2 million.

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III. CONCLUSION

GBRS supports the position of SMR WON, and GBRS disagrees that auctions should be conducted on spectrum that already has full incumbent SMR and EMSP use in the top 150 cities of the USA. The approach to auction by MTA would better be served by BEA since several large cities of separate market areas are within each MTA, if auctions indeed are permitted.

The Commission needs to control the speculation problem in the 800 MHz band by opportunists who will sell their FCC license and not build out their FCC license grant. A solution would be to impose a \$5,000.00 performance bond valid for the 5 years of the FCC license payable to the Commission in order for the industry of other providers to report that they did not construct and/or operate their FCC grant. An additional solution would be to impose a mandatory prison sentence of 6 months for falsifying reports and status to the Commission of the FCC license.

Wide-area EMSP operators, namely NEXTEL, want an equal playing field with cellular who each operator has 660 analog channels with radio-telephone service. NEXTEL is implementing digital TDMA on 800 MHz channels that provide 6 digital channels for 1 analog channel.

So if the Commission only auctions 100 channels then an equal playing field will exist for cellular, wide-area EMSP and the incumbent - traditional SMR operators. Only 100 channels will be auctioned for EMSPs, and the remaining 100 channels will be retained for traditional SMRs. The wide-area EMSPs will have up to 600 digital channels to compete with cellular.

Wide-area EMSPs want to re-farm existing 800 MHz SMR channels into MTA territorial grants on a too-fast timetable, and to not allow existing users to have adequate time use of their radio investment in the traditional 800 MHz SMR service. The Commission should consider slowing down this rapid pace like the re-farming time scale of 6 or 10 years in upcoming re-farming of the spectrum below 800 MHz.

WHEREFORE, THE PREMISES CONSIDERED, Genesee Business Radio Systems, Inc. respectfully submit these Reply Comments and urge the Federal Communications Commission to act in accordance with the views expressed herein.

GENESEE BUSINESS RADIO SYSTEMS, INC.

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By:


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